

**COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K05-R-09**

PAUL J. AND LESLIE PERCONTI

APPELLANT

VS.

FINAL ORDER K-19416

**COMMONWEALTH OF KENTUCKY
FINANCE & ADMINISTRATION CABINET**

APPELLEE

This matter is before the Board on the Petition of Appeal filed by Paul J. and Leslie Perconti. Paul J. Perconti appeals the final ruling of the Cabinet denying him a business loss deduction for \$1,850, 000.00 for tax year 2003.

After consideration of all evidence presented by documents and at the hearing on August 8, 2005, the Board makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Mr. Perconti served in an executive capacity with Thornton Oil Company for approximately sixteen years. By 1998 he was CEO of that company.

As part of the business of Thornton Oil the company invested in the futures market as part of a strategy known as “hedging”. Because Mr. Perconti and other executives received a portion of their compensation by way of bonuses based upon the company profits, Mr. Perconti and the CFO of Thornton devised a plan whereby futures investments were being made on their own private behalf along with the Thornton Oil investments in an attempt to “hedge” their own bonuses and personal income components.

When profits from the private hedging activity were realized, the profits were distributed to Mr. Perconti. However, when losses occurred, particularly losses from the requirement to pay margin calls, Thornton money was used to meet those calls even though the investments were personal to Mr. Perconti.

Thornton fired Mr. Perconti and sued him for conversion. Mr. Perconti filed for Chapter 11 bankruptcy relief. Thornton obtained a conversion judgment against Mr. Perconti which was admittedly non dischargeable.

Mr. Perconti prosecuted other claims of his own against Thornton Oil. In the end a settlement was reached whereby Mr. Perconti received approximately \$3 million dollars from Thornton but paid into a Debtor In Possession escrow account. This money was paid by Thornton to Mr. Perconti for personal claims, some of which Mr. Perconti won by court judgment.

However, also as part of the settlement agreement, Mr. Perconti agreed to pay to Thornton Oil \$1, 850, 000 in settlement of the conversion judgment Thornton had obtained against him, also a personal liability.

Mr. Perconti has characterized this payment as a “business” expense on his 2003 Kentucky return and has attempted to support this contention by the claim that the payment was for losses suffered by him as part of his investment losses.

Unfortunately the payment was not for such losses but by his own admission paid as a result of a judgment obtained against him personally for conversion. As such his appeal must fail.

CONCLUSIONS OF LAW

This entire matter turned upon the determination of the purpose of the

\$1, 850,000.00 payment. Having found that this payment was made directly as a result of and in compliance with a written settlement agreement the Board concludes that the Appellant is not entitled to the deduction he has claimed. The payment was in settlement of a personal judgment against the Appellant for a non-dischargeable debt for conversion. It was not, as Appellant claims, a business loss.

ORDER

It is therefore the Order of the Board that the Appellant has failed to meet his burden of proof and as such the final ruling is sustained.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted

all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or
- (c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER
AND MAILING: November 7, 2005**

**KENTUCKY BOARD OF TAX APPEALS
FULL BOARD CONCURRING**

**NANCY MITCHELL
CHAIR**